

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 20-22476-mg

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5 In the Matter of:

6

7 FRONTIER COMMUNICATIONS CORPORATION,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 April 16, 2024

16 3:00 PM

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

1 HEARING re Discovery Conference Using Zoom for Government
2 (Doc #2323, 2324, 2326, 2327)

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Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: All right. Good afternoon, everybody.
3 We're on (indiscernible) --

4 MR. MAS: Good afternoon, Your Honor.

5 THE COURT: -- 20-22476. It's a discovery
6 conference. I have Mr. Twardy's April 11th letter, and
7 let's begin with that. Mr. Twardy, you going to begin? I
8 --

9 MR. TWARDY: I --

10 THE COURT: -- (indiscernible) letters that have
11 been sent as well for (indiscernible).

12 MR. TWARDY: Thank you, Your Honor. Mr. Letten,
13 who is involved on behalf of Frontier, will be handling this
14 part of the argument or hearing today.

15 THE COURT: Okay. Mr. Letten, go ahead.

16 MR. LETTEN: Good afternoon, Your Honor. Matthew
17 Letten from Day Pitney on behalf of Frontier. I'm not going
18 to take the opportunity to repeat the arguments in the
19 letter, but I did think that it made sense to address the
20 points raised in RCC's letter. And to start off by noting
21 that --

22 THE COURT: No, let's start with the issues you
23 raise in your letter. That's what this was called about.
24 We are -- we'll talk about the others, but --

25 MR. LETTEN: Oh.

1 THE COURT: -- I want to deal with the issues
2 first that are raised in the April 11th letter.

3 MR. LETTEN: To clarify, Your Honor, I was
4 referencing RCC's April 15th letter responding to our
5 request for these documents.

6 THE COURT: Okay.

7 MR. LETTEN: And I wanted to point out in terms of
8 what is not being raised or argued by RCC, which is that
9 these requests and the search terms that we've proposed,
10 there's no argument that these are overbroad or burdensome.
11 The arguments that RCC have raised are focused on relevance
12 and privilege. Now, in terms of relevance, I don't think we
13 could disagree more because the parties are going to have a
14 dispute at trial regarding the applicability of the safe
15 harbor defense. And part of that dispute is going to be
16 what the safe harbor defense requires and whether Frontier
17 qualifies for it.

18 And our position is that repeat infringer policies
19 that other ISPs had are relevant to many of the
20 considerations under the safe harbor, including what are
21 appropriate circumstances in which an ISP should terminate a
22 customer, when does a customer constitute a repeat infringer
23 that might need to be terminated in order to qualify for the
24 safe harbor.

25 And RCC cites a handful of cases in their letter,

1 but none of them actually say that other ISP repeat
2 infringer policies are irrelevant to the safe harbor
3 defense. Most of the cases are simply silent as to what
4 other ISPs may have done or not done with respect to their
5 own repeat infringer policies. And the exception is
6 actually the Grande case, which supports our argument and is
7 in our favor. Because in the Grande case, the district
8 court actually explicitly looked to Cox's policy and
9 compared it to Grande's lack of a policy in determining that
10 Grande could not invoke the safe harbor. So we think that's
11 actually an example of a case establishing that these types
12 of documents are relevant to our safe harbor defense.

13 Just to address a few other points in their
14 letter, even if they say the documents might be relevant,
15 they suggest that the communications would be hearsay.
16 They're not hearsay. They're admissions by a party
17 opponent.

18 THE COURT: Well, hearsay is not -- wouldn't bear
19 on --

20 MR. LETTEN: It wouldn't.

21 THE COURT: -- whether or not discovery has to be
22 given.

23 MR. LETTEN: Exactly because the evidence doesn't
24 need to be admissible for it to be discoverable. And
25 there's also an argument about, well, we should go out and

1 get these documents from the ISPs themselves through third-
2 party discovery. And what I would say is that we're
3 certainly considering taking third-party discovery from the
4 ISPs, but that does not absolve RCC of producing relevant
5 documents in its own possession, custody, or control. And
6 indeed, the documents that we might receive from RCC might
7 inform what ISPs we subpoena and what documents we ask for.
8 And frankly, whenever you serve a third-party subpoena, the
9 third party is going to ask you are these documents that you
10 could obtain the litigation through party discovery and have
11 those requests been served.

12 Lastly, just on the point about privilege, the
13 argument is that these search terms and these requests are
14 going to turn up a majority of privileged documents, and
15 that's not an argument that we can test or really probe
16 because RCC hasn't actually run the search terms or reviewed
17 the documents. And also, what I would say is that just
18 because a request might yield some privileged documents does
19 not mean that it's a request that the party can avoid
20 complying with.

21 And that in our case, Frontier has agreed to run
22 searches and to run search terms that we thought might yield
23 a substantial amount of potentially privileged materials,
24 but we still agree to run them. And we've agreed to, when
25 required, log those documents. So for all of those reasons,

1 we think that this is a case where to date this is the only
2 discovery dispute that we, Day Pitney, has brought before
3 the Court, and we've done that because we think these
4 documents are important to our ability to present a safe
5 harbor defense. And we'd ask that the Court compel their
6 production.

7 THE COURT: All right. Mr. Oppenheim, do you want
8 to respond? You're muted.

9 MR. OPPENHEIM: Apologies about that. That was
10 probably the best part of my argument.

11 THE COURT: Famous last words of a judge with Zoom
12 hearings.

13 MR. OPPENHEIM: If I may, I'm going to make four
14 points, Your Honor. The first is that there -- the
15 documents they're seeking are legally irrelevant. The
16 second that the documents they're seeking wouldn't
17 demonstrate an ISP's policies and procedures. Third, that
18 the -- any internal communications about other ISPs are
19 likely privileged. And last but not least, we -- and the
20 reason I'm headlining the four arguments before I start is
21 to get to this fourth point, which I will elucidate more
22 later.

23 We don't believe any documents here exist that are
24 non-privileged, so I think we're fighting over a lot of
25 nothing, but it's an important legal issue. So let me start

1 with that issue.

2 THE COURT: Just give me one moment. I'm sorry.
3 Go ahead.

4 MR. OPPENHEIM: So what the -- what Frontier is
5 seeking here are communications that the record companies
6 have had relating to what other ISPs' policies and
7 procedures are. And they justify it saying that they're
8 looking for documents which will demonstrate benchmarking or
9 an industry standard. But not a single case that has
10 considered Section 512's safe harbor provisions look to
11 benchmarking for industry standards.

12 In fact, the Second Circuit opinion on this MP3
13 Tunes explicitly dives into the legislative history behind
14 the language in 512 and then turns to the dictionary for
15 what is the normal meaning of the terms in the statute.
16 Other decisions, Cox doesn't look at anything else. Hot
17 File out of Florida doesn't look at anything else. And
18 while Grande does compare to the Cox decision, it doesn't
19 compare to any internal Cox documents, doesn't suggest that
20 discovery from any of the parties about other ISPs or
21 discovery from other ISPs would be appropriate.

22 The only thing the Grande case did was say there's
23 no safe harbor here. And of course given that this is far
24 worse than Cox where they found no safe harbor, it's an
25 obvious conclusion. That decision cannot be support for the

1 proposition that a full-blown discovery effort into what
2 other ISPs' policies and procedures are and that somehow
3 that there's an industry standard, a legal standard here is
4 hollow.

5 THE COURT: But you know, Mr. Oppenheim, at a
6 prior hearing I believe I asked you and asked the other side
7 whether any -- whether there's any case law that's
8 determined -- you know, how many infringement notices do
9 there have to be before there's reliability. And nobody has
10 told me about any prior decisions that have set a threshold,
11 whether you've argued that three or more, whether it's
12 three, ten, five, whatever it is, I was obviously -- am very
13 interested whether any other courts have determined what
14 would a reasonable policy be. And then of course if you've
15 had a policy, was it enforced?

16 So whether it turns out at trial that other ISPs'
17 policies are determinative, relevant, we'll see what the
18 standard is, doesn't indicate whether or not they're
19 discoverable. Let me ask you this. What other ISP policies
20 do -- does your client have within its possession?

21 MR. OPPENHEIM: Well, the only documents that the
22 plaintiffs would have responsive to their requests,
23 privileged or non-privileged, would be documents that they
24 have by virtue of another ongoing litigation against an ISP
25 subject to obviously protective orders, right? Or to the

1 extent that they're engaged in some enforcement effort
2 outside of court. So there are, believe it or not, ISPs
3 that sit down and have negotiations and mediate these things
4 outside of court and might have some information in the
5 context of those efforts.

6 Otherwise, our clients have not entered into any
7 agreements with ISPs responsive to the document requests as
8 to what would be a responsible or complaint repeater
9 infringer provision. There are no such documents.

10 THE COURT: Let me ask my question again.

11 MR. OPPENHEIM: Yeah.

12 THE COURT: How many other ISP policies do you
13 have in your possession?

14 MR. OPPENHEIM: So I'm -- the reason I'm
15 struggling, Your Honor, is the distinction between the
16 policy and the procedure.

17 THE COURT: Well, let me -- then let me ask it
18 both ways. How many policies or procedures of other ISPs do
19 you have in your possession?

20 MR. OPPENHEIM: Other than cases like -- you know,
21 obviously we have the ongoing cases, Cox, which we've listed
22 for Your Honor in the past to the extent we have
23 (indiscernible).

24 THE COURT: List them for me again. Because I
25 don't have clearly in mind with respect to the question I've

1 just asked how many other ISPs' policies or procedures do
2 you have in your possession. Possession, custody, or
3 control. You know, I don't care whether they're sitting in
4 a box in your office or not.

5 MR. OPPENHEIM: Yeah. So there's an easy answer
6 and there's a hard answer. So we have cases, right, which
7 we've described for you and I'll describe again, you know,
8 pending against Grande, which is up on appeal, Cox, which is
9 also on appeal, RCN, which is in the district court, Altice,
10 which is down in Texas, and this case. And if I've missed
11 something, one of my colleagues will jump in. I think those
12 are the currently pending cases. We've previously litigated
13 --

14 THE COURT: So four plus this case.

15 MR. OPPENHEIM: I believe so. We've previously
16 litigated and resolved as against Charter and BrightHouse.

17 THE COURT: And do you have those in your
18 possession too?

19 MR. OPPENHEIM: I doubt it because I believe
20 they're -- I doubt it, and I think it's -- there was a
21 confidential settlement agreement that provided for certain
22 issues. So I don't believe we have that.

23 THE COURT: Okay.

24 MR. OPPENHEIM: But Your Honor, everything we have
25 there would be subject to what we obtained in litigation.

1 And the reason I hesitated when you asked is because when
2 you asked about the procedures, it's never that there's a
3 single piece of paper or set of papers as to what the
4 procedures are. So for example, in the Cox case, what we
5 discovered is that after taking dozens of depositions,
6 reviewing lots of documents, we were able to determine what
7 the procedures were over -- and how they changed over time,
8 which was very different than what the policy was. So it's
9 difficult to say --

10 THE COURT: Well, I haven't asked about do you
11 have any depositions that you've taken to develop, you know,
12 here's what's on paper, but here's what it was in practice.
13 Is it correct that you have in your possession policies or
14 procedures for Cox, Grande, RCM, and Altice?

15 MR. OPPENHEIM: I couldn't say for certainty that
16 we do. We probably -- we have something, Your Honor. I
17 don't know that it's clean. But if what we really wanted to
18 get at was to -- if -- so I don't think that we need to look
19 at what other ISPs are doing as a legal matter because I --
20 but I hear Your Honor's not asking about that. But if what
21 we're -- if we were looking to what other ISPs were doing,
22 then the way to do that is to send subpoenas to other ISPs.

23 THE COURT: Well, you know, let me deal with that
24 right off the bat, okay? The fact that documents may be
25 available from third parties, the same documents that you

1 have in your possession, doesn't mean that I shouldn't order
2 you to produce them.

3 MR. OPPENHEIM: Of course.

4 THE COURT: You know, if -- it may be that you
5 have signed protective orders in each of those other cases
6 that require that before you produce materials that have
7 been marked as confidential or highly confidential, that you
8 give them notice. I don't know whether that's true or not.
9 That wouldn't -- I've had this issue arise in other cases.
10 That wouldn't prevent me from ordering you to produce them,
11 and it wouldn't -- it may be that while other issues were
12 sorted out I might order them produced attorneys'-eyes-only.

13 I'm not making any decisions about that, but the
14 fact that you received documents subject to a
15 confidentiality order in another case doesn't mean that you
16 won't have to produce them here. I'm not at the point of
17 saying yes produce them, but you know, to use the term in
18 quotes in your April 15th letter about benchmarking, whether
19 benchmarking sets the applicable standard or is evidentiary
20 in support of what the applicable standard ought to be is
21 not an issue for today.

22 I would come back because I did ask both sides at
23 a prior hearing whether there are any decisions that
24 determine how many repeat infringement notices are required
25 before liability. And I think you told me that there -- you

1 were not aware of any cases that actually set down such a
2 rule. That's more or less what I recall. You may recall it
3 differently, but -- so it seems to me whether it's on a DMC
4 affirmative defense or whether it's affirmative elements of
5 a claim, I'm going to have to make a -- well, let's put
6 aside the affirmative elements for now, but on the
7 affirmative elements of the claim, I'm going to have to make
8 a determination of what were the procedures that Frontier
9 followed.

10 Did they abide by the procedures that they had set
11 down in writing? Were those procedures reasonable? Did --
12 you know, if they had a policy, I think somebody mentioned
13 14 infringement notices in the past. Spread over how much
14 time I don't know, but let's just hypothetically say ten.
15 Well, did they enforce the ten? I mean, you suggested that
16 they set out some guidelines and then didn't follow them.
17 All of that would be relevant it seems to me to the evidence
18 at trial.

19 I'm not making any determination whether the
20 policies of any of these other, you know, Cox, Grande, RCM,
21 or Altice, whether those set forth, what the Court should
22 consider in setting the applicable standard for this case,
23 that's not today's issue. So -- but I think that, you know,
24 Day Pitney makes a credible argument that they're entitled
25 to see that if you -- for example, if you received a policy

1 in one of these cases that said five infringement notices
2 over -- and set a time period, and they enforced it, and no
3 liability resulted in that case. It may be probative, okay?

4 I mean, you may have arguments at trial that don't
5 pay any attention to that. I understand. I'm not --
6 there's a difference between what's discoverable and what if
7 any weight should be given to it at trial. But go ahead
8 with your argument.

9 MR. OPPENHEIM: So I don't -- we may disagree
10 ultimately on what the legal standard is, Your Honor. And I
11 understand that's for a different day.

12 THE COURT: I asked you about what the legal
13 standard is before and you said -- you kind of used three or
14 more. But you've -- okay. That sounds like maybe a
15 perfectly reasonable -- but you didn't say because there are
16 six cases that say that's reasonable. You said -- you kind
17 of used that as a benchmark ruling.

18 MAN 1: Your Honor, if I --

19 MR. OPPENHEIM: If I believe -- if I may, Your
20 Honor, to separate the issues, there's the safe harbor issue
21 and then there's the --

22 THE COURT: Yes.

23 MR. OPPENHEIM: -- knowledge requirement.

24 THE COURT: Right.

25 MR. OPPENHEIM: On the safe harbor issue, right,

1 it's -- the question is whether or not they have a policy
2 and they've communicated that policy for dealing with repeat
3 infringers, including termination in appropriate
4 circumstances. The Second Circuit analyzed that in the MP3
5 Tunes case without looking at any -- what anybody else did.
6 But let me not ignore what you've just described and what
7 you're interested in. They have -- critically here, Day
8 Pitney has not asked for what you just described.

9 What they've asked for are communications with
10 online service providers, right, or agreements between the
11 record companies and online service providers. They have
12 not asked for what you just described, which would be the
13 documents we've obtained in litigation regarding what other
14 ISPs may be doing in terms of policies and procedures. So
15 our focus on this has been in response to their request.
16 Because the communications -- well, first of all, I don't --
17 again, I don't think there are going to be any
18 communications other than with the -- their own lawyers,
19 i.e. --

20 THE COURT: Well, that wouldn't be --
21 communications between you and their lawyers wouldn't be
22 privileged.

23 MR. OPPENHEIM: Right. Well, our -- the record
24 company's communications with me would be privileged.

25 THE COURT: Yes, I agree.

1 MR. OPPENHEIM: Okay.

2 THE COURT: Maybe.

3 MR. OPPENHEIM: Right.

4 THE COURT: At least presumptively. Let's put it
5 that way.

6 MR. OPPENHEIM: Right. Hopefully they're
7 privileged --

8 THE COURT: Yeah.

9 MR. OPPENHEIM: -- but -- so then the question
10 you're raising is are there policies and procedures for
11 other ISPs that have been the subject of litigation that may
12 help inform the Court. And on that, I mean we could produce
13 -- Cox -- excuse me, Charter and BrightHouse, there's a
14 protective order that required the destruction of all
15 documents at the end of the litigation. So those documents
16 don't -- or we don't have them. We'd have to go to --

17 THE COURT: You hope so. Put it this way. I can
18 -- it's been a long time since I've been in practice, but I
19 can remember situations where things that maybe should've
20 been destroyed were --

21 MR. OPPENHEIM: I will tell you it was a sensitive
22 enough issue that it ended up being something that got a lot
23 of attention. So --

24 THE COURT: Okay.

25 MR. OPPENHEIM: -- if it was not done --

1 THE COURT: Look, let me just stop you for now.

2 Let's -- for purposes of discussion, let's exclude Charter
3 and BrightHouse. Okay.

4 MR. OPPENHEIM: So then the question --

5 THE COURT: But there's still four others --

6 MR. OPPENHEIM: -- (indiscernible) --

7 THE COURT: -- that you gave me the names of.

8 MR. OPPENHEIM: Right. So you know, could we try
9 to identify within those cases certain documents? I mean,
10 the policies are one thing. The procedures are much harder.
11 The policies we could try to do, but they're all subject to
12 a protective order, so I assume we'd have to give some kind
13 of notice that -- in advance as Your Honor explained before
14 we could produce them.

15 THE COURT: But let me see if we can just separate
16 this out a little bit. If you had to take a bunch of
17 depositions to find out what they really did, what their
18 procedures are, that's one thing. What I'm focused on right
19 now is for Cox, Grande, RCM, and Altice, do you have written
20 documents that purport to be those entities' policies with
21 respect to repeat infringers? Look, it may be -- and I'm
22 not ruling yet. I'm going to give them a chance to argue
23 further, but you know, maybe they want the sun, the moon,
24 and the stars, but what I may order you to do is produce
25 copies of written policies that you have in your possession,

1 custody, or control from Cox, Grande, RCM, and Altice.

2 So I mean, it's not -- you know, sometimes
3 discovery disputes aren't necessarily binary. Either give
4 them everything they've asked for or none of what they've
5 asked for. This is a two-way street. There -- you know,
6 you in your letter raised lots of issues we'll get to talk
7 about a little bit --

8 MR. OPPENHEIM: Yeah.

9 THE COURT: -- when we're done. So what -- look,
10 I've given this message before. There's --

11 MR. OPPENHEIM: We could --

12 THE COURT: -- a lot to be -- no, stop.

13 MR. OPPENHEIM: Sorry.

14 THE COURT: There's a lot to be done in this case.
15 I don't want to be fighting about discovery issues four
16 months from now, okay? And you know, if you tell me -- if
17 you suggested that you had to take a whole series of
18 depositions to find out what their procedures really were,
19 that's not responsive to the document requests that they've
20 served, okay, in my view. Go ahead.

21 MR. OPPENHEIM: I believe, Your Honor, that with
22 respect to Cox, we could identify a handful of documents
23 that would be responsive to what you've described.

24 THE COURT: Okay.

25 MR. OPPENHEIM: I -- in Altice -- so I am not

1 counsel in Grande, Altice, or RCN, but my clients are
2 parties so I can find out --

3 THE COURT: Okay.

4 MR. OPPENHEIM: -- if there are such documents.
5 And if there are, subject to giving notice, we can produce
6 them. So I wanted to answer your question directly. So I
7 think I have, but I do have a question back for Your Honor
8 then if I can ask.

9 THE COURT: Okay. You ask me, and then I have one
10 for you. Go ahead.

11 MR. OPPENHEIM: Does that mean that we could
12 subpoena other ISPs?

13 THE COURT: No.

14 MR. OPPENHEIM: Because I think as you can tell
15 from the way this case has proceeded with Frontier, ISPs are
16 incredibly guarded about what their policies are. And
17 frankly, what they say they are is rarely what they really
18 are. And so if Your Honor is suggesting that it may be the
19 case that you -- that looking to other ISPs in an industry
20 standard, I think we might very much enjoy the opportunity
21 of issuing a bunch of subpoenas to gather that information.
22 Because it would be very revealing.

23 THE COURT: I bet your clients would love you to
24 do that.

25 MR. OPPENHEIM: I'm being upfront about it, Your

1 Honor.

2 THE COURT: Let me ask you this question. In any
3 of your other cases, has there been discovery of the
4 policies of other ISPs? In other words, you've had cases
5 against an ISP. You've obviously sought to discover what
6 their policies were. You've taken depositions about their
7 procedures. If there are documents, you've gotten the
8 documents. But in any of those cases, has one party or
9 another sought discovery, public -- you know when I say
10 public discovery, through service of subpoenas, et cetera,
11 or document requests, or policies of other ISPs?

12 I can't believe that this issue of I'll call it
13 benchmarking for -- without really exploring what it means,
14 but I'd be surprised if that hasn't, in any of the litigated
15 cases, that hasn't come up.

16 MR. OPPENHEIM: So I don't -- so the music
17 industry has regularly taken the position that it's -- other
18 ISPs are not relevant. I'm not aware, Your Honor, that it
19 has come up. It may -- a two-part answer. It may have come
20 up in the BrightHouse case and the magistrate may have ruled
21 on it, but I -- we certainly didn't produce anything. If
22 so, we would've won on it. I can't -- I'm not dead certain.

23 But I will say the one thing that has come up, and
24 I'm forthcoming, many years ago, well before the discovery
25 period, a number of ISPs tried to reach an agreement with

1 the movie industry and the music industry. Not including
2 Mr. Culpepper's clients, but the larger studios. And there
3 was a lot of discovery fights over those documents, but none
4 of those speak to what the ISPs' standards were. That was
5 just a -- that was an effort to reach a private agreement,
6 which failed ultimately.

7 MR. LETTEN: Your Honor, if I could jump in here
8 on a few points, I just -- I think that --

9 THE COURT: Wait. Stop.

10 MR. LETTEN: Okay.

11 THE COURT: Stop. I want to make sure Mr.
12 Oppenheim has had a chance to say whatever he wants to say.
13 I'll give you a chance to speak again.

14 MR. OPPENHEIM: Yeah. So again, I would come back
15 to I do think that the courts have clearly looked at what
16 other courts have said on the safe harbor, Your Honor. But
17 I'm not aware that they've sought discovery as is
18 contemplated here. So I think I've covered the landscape,
19 but I'm happy to answer other questions.

20 THE COURT: All right. Just give me a minute.
21 I've actually -- you've pointed to MP3 Tunes. I've opened
22 the case. I just want to read it on my other screen what
23 you're pointing to. Just give me a moment. What is it in
24 the MP3 decision that you think supports your position?

25 MR. OPPENHEIM: Actually, it's what isn't in the

1 MP3 decision, which is any reference to an industry
2 standard, other ISPs, or anything like that. If you look at
3 the analysis of -- the Second Circuit was reversing Judge --
4 I believe it was Judge Pauley in his decision because Judge
5 Pauley had ruled that there was a safe harbor. And the
6 Second Circuit reversed it and held that Judge Pauley's
7 interpretation of what constituted a repeat infringer was
8 inconsistent with both the legislative intent and the
9 language -- the common language of the statute.

10 So nothing in there when they're talking about
11 what constitutes a repeat infringer looks to any industry
12 standard. They're looking at what's the common
13 understanding of what these things mean.

14 THE COURT: All right. Anything else you want to
15 say at this point, Mr. Oppenheim?

16 MR. OPPENHEIM: Not at this point. Thank you,
17 Your Honor.

18 THE COURT: Okay. Mr. Letten?

19 MR. LETTEN: Thank you, Your Honor. I think that
20 the production of policies and procedures from Cox, Grande,
21 RCN, and Altice is a -- certainly a very good start from our
22 perspective, but I wanted to explain why we don't think it's
23 the end, and which is that these four cases that have been
24 cited, these are ISP defendants that RCC decided to sue.
25 And I'd -- I think that if the only picture of what other

1 ISPs were doing at the court is presented with is the
2 decision, what's available publicly, and the decision in Cox
3 and Grande and what might be produced regarding RCN and
4 Altice is going to present a slanted view about what other
5 ISPs are doing. You had a company like Grande, which didn't
6 really have a policy for terminating repeat infringers, and
7 Cox that had a policy and wasn't following it.

8 THE COURT: Let me interrupt you.

9 MR. LETTEN: Yeah.

10 THE COURT: It sounds like you already have the
11 policies of these other ISPs. Do you?

12 MR. LETTEN: No, Your Honor. I'm reading from the
13 Cox and Grande decisions essentially. That's what we have.

14 THE COURT: Just to be clear, do you or your
15 client have in your possession, custody, or control any
16 repeat infringer policies of any other ISPs? Yes or no.

17 MR. LETTEN: Not to my knowledge. And I'll say
18 that I mean I'm excluding the -- what's publicly available
19 now, the trial transcripts from Cox and Grande. And at
20 least Comcast has an online document that's publicly
21 available that it can -- that it calls itself a DMCA policy.
22 But in terms of these sort of internal documents that we're
23 talking about, I'm not aware that my client has any of
24 those.

25 THE COURT: Okay.

1 MR. LETTEN: And so I think --

2 THE COURT: Yeah, look, I --

3 MR. LETTEN: -- limiting it to its
4 (indiscernible).

5 THE COURT: -- let me just say, I told Mr.
6 Oppenheim I'm -- the issue for me today is not admissibility
7 at trial. And nothing I've said should suggest that whether
8 you get them from RCC or you get them elsewhere that any of
9 it is going to be admissible at trial. But I don't view the
10 issue of whether it's discoverable -- it clearly is not.
11 It's not the issue of admissibility. So...

12 MR. LETTEN: And that's why I think we would ask
13 the Court --

14 THE COURT: Let me just say -- make another
15 comment. You know, for example, if you go out and serve
16 subpoenas on every other ISP you can think of asking for
17 their policies and they object, don't count on getting them,
18 okay? We're not going off on a detour and frolic about
19 other ISPs. Okay.

20 MR. LETTEN: And I think that's part -- that's a
21 large part why we're here. We're just trying to get the
22 documents that RCC has through a party discovery. And what
23 I really think, I mean, RCC should search for, we proposed
24 very narrow search terms. We haven't heard any argument
25 that they were turning tens of thousands or hundreds of

1 thousands of documents. Besides the documents that they can
2 easily identify from those other litigations, to the extent
3 that the RCC had communications with other ISPs where they
4 sent a demand letter and the ISP said here's our policy, we
5 think we're doing a really good job, and RCC decided not to
6 sue them, I think we would like to see what those other
7 polices are.

8 THE COURT: Well, I don't think I'm going to give
9 you those, okay? Let me make -- I don't know whether they
10 exist, but you're not going to get them, okay? We're going
11 to try this case and not every other case. And the fact
12 that Mr. Oppenheim and his colleagues or other firms, you
13 know, made demands and settled cases, all well and good.
14 That's not coming in here.

15 MR. LETTEN: Well, it's not necessarily the fact
16 of the settlement. I think we're just -- we're interested
17 in what --

18 THE COURT: You're not going to get them.

19 MR. LETTEN: -- the other policies are.

20 THE COURT: I'm just telling you right now. I'm
21 not ordering the production of what you're asking for beyond
22 written policy and procedure documents. So if Mr. Oppenheim
23 and his colleagues had to take a dozen depositions pulling
24 teeth to find out what the policies were, that's not what I
25 am considering ordering production of. If there are

1 documents that set forth policies or procedures of Cox,
2 Grande, RCM, or Altice, I'm considering ordering the
3 production of those. If they're subject to protective
4 orders in other cases, the typical protective order requires
5 notice. That's not going to bind me, frankly. I mean, if
6 they want to come in and object to -- we have some
7 objections from Frontier subscribers, for example, about
8 producing PII, but it got ordered produced, okay?

9 MR. LETTEN: So the -- just the last thing I'll
10 say, and it's not related to the documents necessarily, but
11 to the Court's questions about what cases are out there.
12 And what I would say is that when it comes to internet
13 service providers, there are not a lot of reported cases
14 analyzing when they are liable for secondary -- for
15 contributory copyright infringement or vicarious copyright
16 infringement, and even fewer cases analyzing whether they
17 qualify for the safe harbor. I think the cases --

18 THE COURT: What is --

19 MR. LETTEN: -- that we have are --

20 THE COURT: Let me ask you this. You may -- you
21 no doubt have looked at it, and Mr. Oppenheim can address
22 this as well. Were there jury instructions in Cox with
23 respect to, you know, reasonable policies, repeat
24 infringement policies, et cetera? Were there jury
25 instructions that dealt with it?

1 MR. LETTEN: That I don't know offhand. I can
2 tell you that I have read a decent amount of the trial
3 transcript in that case, but not -- I haven't gotten that
4 far. I don't know if Mr. Oppenheim (indiscernible).

5 THE COURT: Mr. Oppenheim, are there jury
6 instructions that deal with it?

7 MR. OPPENHEIM: Not on that, Your Honor. The
8 Court in Cox determined on summary judgment that there was
9 no safe harbor. I believe the same was true in Grande. I
10 don't -- I'm not aware of the safe harbor ever going to
11 either a judge or a jury outside of summary judgment. And
12 I'll just note as Mr. Letten just described the policies for
13 Cox and Grande are in the trial's transcripts. So we can
14 pull them out of there probably without having to deal with
15 the protective order issue. And if he's got the transcript,
16 he frankly already has them. But we can certainly identify
17 where in the transcripts those exist.

18 For Altice and RCN, Your Honor, those are ongoing
19 cases for which summary judgment I don't believe has been
20 briefed. There -- I believe it would be incredibly
21 contentious. I'm not saying necessarily on our side, but on
22 the other side any kind of -- well, and actually our side
23 too. I can imagine counsel saying we don't want to have to
24 reveal our hand in this case before we have to reveal it in
25 the underlying case.

1 But if Your Honor orders it, we'll ask and we'll
2 see what we can find. But as I understand it, Mr. Letten's
3 looking for the cases where record companies have said,
4 well, that policy's okay. And apart from the fact that Your
5 Honor isn't going to order it, I'm not aware that there will
6 be any such agreements or communications as far as I know.
7 The burden -- the only burden with running the search terms
8 is it's going to turn up, I suspect, an enormous number of
9 privileged communications regarding litigations with ISPs
10 over their policies and procedures. So it's just going to
11 be a privileged log morass.

12 THE COURT: May I ask whether you tried to
13 negotiate the search terms so that you don't pull, you know,
14 the volume of what you believe to be -- because my general
15 view, Mr. Letten, is I -- I'm reluctant to impose any search
16 terms that are going to lead to hundreds or thousands of
17 privileged documents and expect that a privilege log is
18 going to be prepared with listing them all, okay?

19 And Mr. Oppenheim, have you tried to negotiate
20 search terms with Mr. Letten or his colleagues? I mean, as
21 a starting point, it sounds like for Cox and Grande you know
22 that there are policy documents. Maybe you even have them
23 sitting in a drawer in your office. I don't know. And it's
24 not going to involve the burden that you've complained
25 about.

1 MR. OPPENHEIM: Your Honor, I'm happy to identify
2 specific portions of testimony and documents from both trial
3 records on Cox and Grande. We're happy to do that, Your
4 Honor. And frankly, I'm happy to work with them to run some
5 limited searches so long as we can do kind of exclusions by
6 counsel to avoid logging all of that and work on it. I
7 honestly do not believe we will find a single document
8 because I am intimately familiar with the record company's
9 enforcement efforts in this area, but I'm happy to look if
10 the Court directs us to do so.

11 THE COURT: Okay. What I am directing you to do,
12 and so this -- don't view this as the final ruling on it, is
13 to meet and confer with Mr. Letten or his colleagues and see
14 if you can reach an agreement. You know, I don't know. Mr.
15 Letten, have you reviewed the transcripts that Mr. Oppenheim
16 says is relevant? Their policies are set forth in the
17 transcript. I don't know whether they are or not. I don't
18 know whether you've looked.

19 MR. LETTEN: I can't say that I've --

20 THE COURT: Okay.

21 MR. LETTEN: -- reviewed them in their entirety.
22 And I think they would -- it would be the issue of we -- you
23 know, there could be testimony about the policies, but we're
24 just committing to the underlying (indiscernible).

25 THE COURT: I understand.

1 MR. LETTEN: Yeah.

2 THE COURT: I understand. So have a very prompt
3 meet-and-confer on this issue to the extent -- I want the
4 Cox, Grande, RCM, and Altice, to the extent they exist on
5 paper, policy if they're in your possession, custody, or
6 control, Mr. Oppenheim. So it's you and your clients. If
7 you have them, produce them. If you believe that -- if
8 there's sufficient testimony about it in a transcript that
9 will -- you can talk to Mr. Letten if it's going to avoid
10 having to trigger the protective order provisions of notice,
11 and we're going to do this quickly, okay? I'm not going to
12 let this hold things up.

13 Again, I'm not at all -- I have my -- I have real
14 reservations of whether any of this is relevant trial
15 evidence, but that's not today's issue. Okay. I want the
16 discovery to go forward on it. Okay. I do want you to go
17 back and discuss search terms and whether it's through the
18 exclusions. I don't want to find out the situation is there
19 are thousands of documents between or among counsel that
20 would have to be logged on a privilege log. This will be a
21 two-way street at some point, okay? All right.

22 Mr. Letten, are there -- so with respect to -- I'm
23 saying, yes, produce procedures. Policies, if they're set
24 forth in documents, not if it took depositions to drag out,
25 you know, how do they apply guidelines or policies, well, it

1 was in writing and it changed over time, that's not what
2 we're talking about. We're talking about if there are
3 documents that set forth policies or procedures for repeat
4 infringers in those four cases, they should be produced. If
5 we have to have another court hearing about it very soon, we
6 will, but I think you ought to be able to work it out. Were
7 there other issues that you had in your letter? This is the
8 April 11th letter.

9 MR. LETTEN: No, Your Honor.

10 THE COURT: Okay.

11 MR. LETTEN: I think that covers it, and we
12 appreciate the Court's time on this and --

13 THE COURT: All right.

14 MR. LETTEN: -- we'll certainly meet and confer.

15 THE COURT: So now we will switch to the subject
16 that Day Pitney didn't want to talk about today, okay? Go
17 ahead, Mr. Oppenheim.

18 MR. OPPENHEIM: Just --

19 THE COURT: Do you have a question about the first
20 subject first?

21 MR. OPPENHEIM: Yes, just one final point. On RCN
22 and Altice, I do suspect we'll have to give notice under the
23 protective order. I'm not understanding the order to say
24 that we can't do that as that protective order might
25 require.

1 THE COURT: No. Talk to Mr. Letten. If it's --
2 you know, show him the protective order. The protective
3 order is not protected.

4 MR. OPPENHEIM: Right.

5 THE COURT: Show him the protective order, what
6 are the procedures in there. If you have to give notice, do
7 it promptly.

8 MR. OPPENHEIM: Yep.

9 THE COURT: And let's move it forward, okay?

10 MR. OPPENHEIM: Absolutely, Your Honor.

11 THE COURT: Okay. So go ahead with your issues,
12 Mr. Oppenheim.

13 MR. OPPENHEIM: With your permission, Your Honor,
14 I'll invite our association Carly Rothman to raise them in
15 the first instance.

16 THE COURT: Sure. Go ahead, Ms. Rothman.

17 MR. LETTEN: And just, Your Honor, also with your
18 permission, I think another one of my colleagues is going to
19 be addressing these points.

20 THE COURT: Absolutely.

21 MR. LETTEN: Thank you.

22 THE COURT: That's fine. Go ahead, Ms. Rothman.

23 MS. ROTHMAN: Thank you, Your Honor. And thank
24 you for letting us be heard on these issues today. As Your
25 Honor's aware, the parties have had a long history to get

1 through many discovery disputes and document productions.
2 And Your Honor's ordered -- has issued orders relating to
3 that, and we understand that Your Honor wants to be kept
4 apprised of the pace and status of discovery, which is why
5 we're raising these issues today. We still struggle with
6 Frontier's discovery even after our court hearings and Your
7 Honor's clear directives.

8 Just for a little bit of background, on February
9 29th during the court conference, the record companies
10 raised 23 categories of document requests for which no
11 documents had yet been produced. These were categories for
12 which documents could be found without the use of search
13 terms. Your Honor ordered that Frontier produce documents
14 in response to four of those categories within seven days,
15 and Frontier represented to the court that they could
16 produce documents relating to the other 19 requests within
17 30 days.

18 But it seems that we still have large gaps in
19 those productions. Specifically we're missing, you know,
20 entire categories of documents for some of those requests.
21 Frontier has told us that they have produced all non-
22 privileged documents that they could locate through a non-
23 search-term review. We find that hard to believe, and hard
24 to believe that some of these documents don't exist or
25 couldn't be located.

1 And what prompted us to send this letter, Your
2 Honor, is that we had sent Frontier a long email detailing
3 what discovery we thought we were missing asking about what
4 investigation that they have taken. They responded
5 basically saying that, you know, we're covered. You
6 shouldn't be measuring our production by the volume but by
7 the undertaking of our investigation. But that's
8 inconsistent with really what's been produced, so I just
9 want to give a couple of examples.

10 And the first one is the org chart that we've
11 asked for. Our case won't necessarily turn on the
12 production of an org chart, but it's important for us to see
13 that org chart to understand who the proper custodians are
14 to prepare for depositions, to understand, you know, how the
15 repeat infringer program at Frontier was working. We
16 appreciate Frontier confirming in its, you know, letter just
17 this morning that they have no org charts. And you know, I
18 guess we'll have to take them at their word for that, but
19 it's hard to believe a corporation the size of Frontier has
20 no org chart in some form that would be responsive.

21 Another example I want to raise is with respect to
22 the privilege issue. Frontier has said that it has withheld
23 just one document on the basis of privilege. They produced
24 a privilege log on March 29th, but that only showed
25 documents that were produced but partially redacted. So

1 we're not sure exactly what document is being withheld. But
2 putting that aside, they acknowledged today in an email that
3 the individual responsible for overseeing the repeat
4 infringer program used notebooks regularly. So they sent us
5 no responsive non-privileged documents left to produce, yet
6 there's, you know, apparently these notebooks that exist,
7 and they apparently haven't finished their review of that
8 notebook, which is -- we're five months into the case and
9 just, you know, learning about these notebooks. And
10 Frontier apparently is still undertaking a review.

11 So it's unclear why they haven't produced that or
12 at least, you know, put it on a privilege log. And of
13 course, you know, we don't know the totality of what hasn't
14 been produced, but just these two examples alone, you know,
15 indicate that there are certain documents that haven't been
16 produced. And it seems like our letters to the court have
17 prompted -- it's kind of the only thing that's prompting
18 Frontier to make these productions.

19 For example, we were asking for documents relating
20 to terminations for non-payment. We've been seeking those
21 documents for several months, and just this morning after we
22 sent our letter last night they produced a document
23 responsive to that request. So we just -- we're trying to
24 move discovery along, but we raise these issues for Your
25 Honor just to keep Your Honor apprised of the pace of how

1 discovery has been going. And I can give other examples as
2 well for categories that have not been produced.

3 THE COURT: All right. Let me hear from Frontier.

4 MR. LETTEN: Yes. Mr. Tropp will address this.

5 THE COURT: Okay.

6 MR. TROPP: Good afternoon, Your Honor. Jonathan
7 Tropp. I'm sorry I'm a little bit in the dark here, but
8 hopefully you can see me. And hopefully it's not
9 metaphorical. So let me take up the issues that Ms. Rothman
10 discussed seriatim. First, with respect to the org charts,
11 it's not the case that Frontier doesn't have any
12 organizational charts whatsoever. The issue is that the RC
13 are seeking some very specific kinds of org charts related
14 to particular kinds of functions, and Frontier doesn't
15 maintain its organizational charts that way. We do not have
16 any documents that are responsive to their requests, so
17 that's what we've told them.

18 With respect to this concept of notebooks, Mr.
19 Garcia, who is in-house counsel at Frontier and has a
20 variety of functions, many of them legal and privileged,
21 including overseeing this litigation throughout most of its
22 course, has maintained a series of legal pads with his
23 notes. One of the hats that he wears is on the DMCA
24 committee, and RCC are seeking what they think exists are
25 "notebooks" related to his performance of that function.

1 We are not aware of any notebooks related to his
2 performance of that function. We have a series of legal
3 pads with his handwritten notes related to a variety of
4 functions that he performs and not particularly related to
5 his DMCA role. We are in the process of reviewing those
6 note -- those legal pads. Nonetheless, in order to be
7 doubly and triply sure that there is not responsive
8 information that is not privileged, but that process is
9 ongoing. At the moment, there is nothing to log.

10 By the way, if we did log anything on those legal
11 pads, presumably it would say Paul Garcia's legal pads. It
12 wouldn't be a very informative log entry.

13 With respect to the other issues that are raised,
14 this document with respect to terminations, Frontier has
15 been producing documents to the best of its ability as fast
16 as it can. We obtained information for RCC that Frontier
17 does not maintain in the regular course of its business in
18 the form that RCC demanded it. It took some time to extract
19 that information from Frontier's database. We explained
20 this to RCC.

21 THE COURT: May I ask you this? (Indiscernible).
22 In what format, electronic or paper, does Frontier have
23 records about terminations? I gather you're extracting
24 data, but what -- explain to me what is the format in which
25 that information is contained.

1 MR. TROPP: It's a database, Your Honor, that
2 frankly I don't fully understand, but the point is moot
3 because we produced the information that they wanted this
4 morning. They have it now. We told them --

5 THE COURT: How many terminations were there?

6 MR. TROPP: I don't know the answer to that, Your
7 Honor. We provided an entire spreadsheet of terminations by
8 month over a course of years. They have all of that data.
9 We told them last week that it was coming. The assertion
10 that they only get responsiveness from us when they write to
11 you is incorrect. We were in the process of providing that
12 and they got it this morning.

13 And so lastly, with respect to the privilege log,
14 there is only one document. There are multiple copies of
15 it, but only document that we have withheld at this point on
16 the basis of privilege. I should say redacted. We produced
17 the document in redacted form. And as we continue our
18 review of documents and identify additional responsive
19 privileged documents, we will log them to the extent that
20 logging is required.

21 THE COURT: Let me -- Ms. Rothman, let me ask.
22 What information is it that you want from organizational
23 charts? So Mr. Tropp says that they don't have
24 organizational charts broken down by function. What is it
25 -- what's the information that you want?

1 MS. ROTHMAN: We want to understand who was on
2 their DMCA team and what roles they held so that we can
3 understand, you know, how the -- they were functioning and
4 undertaking to review infringement notices and conduct --

5 THE COURT: So in your discussions with Frontier,
6 have they acknowledged that there was a DMCA team?

7 MS. ROTHMAN: Yes.

8 THE COURT: Okay. Why don't you --

9 MS. ROTHMAN: And this is --

10 THE COURT: Why don't you just ask an
11 interrogatory? Ask that question. Identify each person who
12 was a member of the DMCA team and what periods did they
13 serve. You know, one of the things -- it was like --
14 several times -- not faulting you at all, let me make clear.
15 Several prior hearings I said if you're not getting the
16 information, take a 30(b)(6) deposition. And you know, what
17 Mr. Oppenheim has come and said is yeah, we did, and we
18 found out all this stuff that they didn't -- hadn't given us
19 before.

20 So if -- I'm not going to make them create -- if
21 what you're serving is a document order, I'm not going to
22 make them create documents that don't exist unless --
23 frankly, it's often the most expedient way that they can
24 just solve this issue. But you know, if what you're looking
25 for is if they've acknowledged there was a DMCA team, serve

1 an interrogatory with subparts. You know, identify each
2 person. What was the period of time they served? What was
3 their role in the DMCA team? Okay? And better yet, talk to
4 them and see if you can work out how -- okay, you say you
5 don't have an org chart, but we need this information. Work
6 out how and try and get an agreement how they'll make this
7 information available and when. I just...

8 MR. TROPP: Your Honor, if I may, first of all --

9 THE COURT: You have to identify your -- each time
10 you speak, you need to identify your name. Okay?

11 MR. TROPP: Thank you, Your Honor. I apologize.
12 Jonathan Tropp.

13 THE COURT: Okay. Go ahead, Mr. Tropp.

14 MR. TROPP: We're happy to respond to an
15 interrogatory if it's served. We would be happy to respond
16 to an email, which we've tried to do every time we've
17 received one. And we are going to be producing a series of
18 documents through the ESI process that will identify the
19 members of the DMCA team and their role and provide their
20 communications in performing that function. They're going
21 to get all of this stuff. It's coming.

22 THE COURT: When are they going to get it?

23 MR. TROPP: We are producing on a rolling basis,
24 and we've got a large number of documents to get through.
25 We hope to make a further production in the near term next

1 few days, and then more the following week.

2 THE COURT: You know, because one of the things --
3 you know, they're going to decide which members of the DMCA
4 team they want to depose and when they want to do it. And I
5 assume they'll look at the information you give them, and
6 they'll conclude, well, these three people are we think the
7 most important, and so those -- we want to take those. And
8 what I'm -- I've said this before. I want this discovery
9 process to move forward both ways, okay? So it's a two-way
10 street here.

11 And you're all going to run out of time. And if
12 you think you're going to run out the clock on the other
13 side, guess again. And if I find out that you've answered
14 -- you know, responded to a document request that no
15 documents exist, and they take a 30(b)(6) deposition, and it
16 turns out lots of documents exist, you know, things that are
17 available to the Court are things like preclusion orders,
18 and adverse findings, and none of you want to get there
19 either way, okay?

20 And so look, there's a lot of discovery you all
21 need to do within the timeframe that the Court established.
22 And figure out the most expeditious way to do it. So Ms.
23 Rothman, if they tell you we don't have org charts, well,
24 tell us how you're going to give us the information, okay?
25 You know, frankly, I always found that the most useful thing

1 is if counsel were professional was informal ways of getting
2 the discovery you want and not have to go through all these
3 hoops and have repeated conferences about it. Just get it
4 done. You know, I'm not -- I'm really not being critical on
5 this point. I just -- you want the information. What do
6 you want to do with the information? You want to identify
7 who you want to depose.

8 Yes, you wanted to understand what the policies
9 are and all that if they had any policies. Were they
10 written? Did they abide by them? What's the evidence that
11 shows, yeah, they had this written policy and in three cases
12 out of 100 they enforced it? And the other 97 they didn't.
13 Okay. That's what you all are going to want to get to. So
14 are there other issues you want to raise, Ms. Rothman?

15 MS. ROTHMAN: Nothing further. Thank you, Your
16 Honor.

17 THE COURT: Okay.

18 MR. TWARDY: Your Honor, Stanley Twardy for
19 Frontier. Nothing further from Frontier, Your Honor.

20 THE COURT: Okay. Mr. Oppenheim?

21 MR. OPPENHEIM: Nothing further, though I did have
22 a procedure process or --

23 THE COURT: Sure.

24 MR. OPPENHEIM: -- administrative question for
25 Your Honor.

1 THE COURT: Go ahead.

2 MR. OPPENHEIM: I believe you noticed a hearing
3 for the day after fact discovery is supposed to close. It
4 did not say Zoom on it. Does that mean you would like us in
5 person, Your Honor?

6 THE COURT: Yeah, if I didn't say Zoom, I want you
7 here.

8 MR. OPPENHEIM: Very well, Your Honor.

9 THE COURT: Zoom works well for things like this,
10 but at some point -- my preference in big cases, this is a
11 big case, is to have in-court hearings. Mr. Culpepper, is
12 there anything you want to say for today?

13 MS. CULPEPPER: I don't have anything to add, Your
14 Honor. I guess we should point out that the same issue
15 regarding Frontier's request for production 33 and 36 has
16 been holding up on our end as well. Your Honor asked Mr.
17 Oppenheimer about what cases he was involved in. I'm
18 involved in two cases, one in Colorado against ISP
19 (Indiscernible), and the second in New Jersey against ISP
20 RCN. Both of those documents regarding their policies are
21 protected to -- are subject to a protective order with
22 attorneys'-eyes-only protections. I just wanted to raise
23 that issue.

24 Oh, I guess another issue along that line is in --
25 actually in the (Indiscernible) and West case, the defendant

1 wanted to depose plaintiffs on this topic for their
2 knowledge of other ISPs' policies, and that request was
3 quashed.

4 THE COURT: Let me just say, you triggered
5 something in my court. I'm certainly open -- and you want
6 to discuss in the first instance is attorneys'-eyes-only
7 production. And to the extent you want to be able to show
8 it to a consultant or something like that, we'll -- you can
9 deal with that specifically in it. But yes, I do think for
10 competitive reasons otherwise these documents are sensitive
11 documents. And so I'm certainly open to attorneys' eyes
12 only. I don't know whether -- I guess it -- we have an
13 existing stipulation that it does have provisions for highly
14 confidential documents.

15 MS. CULPEPPER: Yes, it does, Your Honor.

16 THE COURT: You have the vehicle to do it here. I
17 don't think you're misusing a highly confidential document
18 if you are designating documents and dealing with protective
19 orders in other cases. You indicate that they'll be
20 designated as highly confidential and attorneys' eyes only.
21 So anything else, Mr. Culpepper?

22 MS. CULPEPPER: Nothing further from movie company
23 clients, Your Honor.

24 THE COURT: All right. Anybody else for today?
25 All right. Let's keep this moving forward. Thank you.

1 MR. LETTEN: Thank you, Your Honor.

2 THE COURT: We're adjourned.

3 MR. OPPENHEIM: Thank you.

4 MR. TWARDY: Thank you, Your Honor.

5 MR. TROPP: Thank you.

6 (Whereupon these proceedings were concluded at

7 4:07 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: April 18, 2024

[06117 - answer]

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